IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

CRL.A.No. 399 of 2003()

SC.21/2000 of ADDL.DISTRICT AND SESSIONS JUDGE
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APPELLANT: ACCUSED:

P.V.MOHANAN, S/O. KUHUNNI,
NANNAMUKKU AMSOM, KALLORUMA DESOM.

BY ADV. SRI.M.P.PRABHANANDAN
SRI.SOJAN MICHEAL

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 15/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CRA. NO.399/2003

ORDER ON CRL.MP. NO.2239/2003 IN CRA. NO.399/2003

DISMISSED

15.10.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.S. TO JUDGE

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K.R. UDAYABHANU, J.

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CRL.A.NO. 399 OF 2003

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DATED THIS THE 15th October 2007

JUDGMENT

The appellant stands convicted for the offence under section 55 (a) of the Abkari Act and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. one lakh and in default to undergo simple imprisonment for two years.

2. The prosecution case is that on 11-3-1999 at about 3.45 p.m. the accused was found in possession of 7 ½ litres of illicit arrack in a 10 litre can near a paddy field in the area for sale.

3. The evidence adduced in the matter consisted of the testimony of Pws.1 to 5, Exts.P1 to P5 and Mos. 1 to 3. The defence got marked Exts.D1.

4. Of the evidence adduced mainly it is the testimony of Pws.1 and 2, the Sub Inspector of Police, who detected the offence and Pw2, the police constable who was in the detecting squad that support the prosecution version. Pws.3 and 4 are the independent witnesses. PW4 has turned hostile. It is pointed out that the evidence of PW3 cannot be trusted in view of the fact that he has admitted that he

signed in Ext.P2 mahazar at the police station. It is established from Ext.P4 chemical analysis report that the sample contained ethyl alcohol of 31.56, 31.81 and 31.35 percent by volume. The version of Pws.1 and 2 is that on receiving source information and after recording the same in the G.D, Pws.1 and 2 along with the witnesses proceeded to the spot and saw the accused who tried to escape leaving the plastic container and that the police chased and caught hold of him. Counsel for the appellant has raised a number of contentions which according to him to render suspicious the prosecution version. It is contended that as per Ext.P1 F.I.R. and Ext.D1 copy of the same supplied to the accused, the number of sample bottles taken varies. In Ext.D1 copy given to the accused, number of the sample bottles is mentioned 2 and in Ext.P3, 2 it is corrected as 3. On a perusal of the above documents and the fact that Ext.P2 mahazar prepared at the spot it is mentioned that three bottles were taken as sample. It is likely that in Ext.D1, the number is mentioned as 2 due to mistake. Moreover, PW1, the detecting officer has not been questioned on the above aspect.

5. It is also contended that PW2, the Police Constable has mentioned that the mahazar was prepared at first and then the sample was taken when questioned in the cross examination. I find

that the above version of PW2 cannot be treated as a serious discrepancy in view of the fact that no such case is put forward by him when PW1 was questioned. The main contention raised is that PW2 has admitted that MO.1 plastic container is empty. As per the prosecution records, MO.1 contained 6.25 litres of illicit liquor and the same was closed and sealed and the same was produced before the court. When specifically questioned in the cross examination, PW2 police constable remained silent . I find that the above aspect was not considered by the court below. All the same, PW2 was specifically questioned on the above point and there is no clarification at the instance of the prosecution. Absence of any explanation on the part of the prosecution is quite material.

In the circumstances and in view of the stringent punishment provided in the statute, I find that the accused is entitled for benefit of doubt. The conviction and sentence imposed by the court below is set aside. The accused is acquitted. The appeal is allowed.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.A. 399 OF 2003-A

JUDGMENT

15-10-2007